

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 1594

INTRODUCER: Criminal Justice Committee; Environmental Preservation and Conservation Committee;
and Senator Bradley and others

SUBJECT: Vessel Safety

DATE: April 1, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1594 authorizes the relocation or removal of a vessel that interferes with another vessel or constitutes a navigational hazard. It authorizes the relocation or removal of a derelict vessel that constitutes a danger to property or persons. The bill requires owners to pay the costs, including those owed to third parties, for relocation or removal of a derelict vessel. It specifies the Florida Fish and Wildlife Commission (FWC), other law enforcement agencies, and officers, under certain circumstances, are not responsible for damages resulting from relocation or removal of a derelict vessel unless the damages occur due to gross negligence or willful misconduct. It defines "gross negligence" and "willful misconduct." The bill provides that a contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer must be licensed in accordance with applicable United States Coast Guard regulations and carry an insurance policy to insure against any accident, loss, injury, property damage, or other casualty. Lastly, the bill directs the Department of Legal Affairs to represent the FWC in actions to recover costs.

II. Present Situation:

Section 327.70, F.S., allows the Division of Law Enforcement of the FWC, and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law

enforcement officer as defined in s. 943.10, F.S.,¹ to order the removal of vessels deemed to be an interference or hazard to public safety.²

Section 327.44, F.S., prohibits anchoring or operating a vessel in a manner that unreasonably constitutes a navigational hazard or interferes with another vessel.

Section 376.15, F.S., authorizes the FWC, its officers and all law enforcement officers as specified in s. 327.70, F.S., to remove a derelict vessel and provides for the recovery of any costs incurred in the removal of a derelict vessel.

Section 823.11, F.S., authorizes the FWC, its officers, and all law enforcement officers as specified in s. 327.70, F.S., to remove any abandoned or derelict vessel when it threatens to obstruct navigation or constitutes a danger to the environment. It also allows for the recovery of the costs of removal from the owner of the vessel.

Florida law does not authorize law enforcement agencies to relocate vessels that create a navigational hazard or that interfere with other vessels.³ An unoccupied vessel may break free of its anchor or mooring and either remain adrift, come to rest in a location that is unsafe for other vessel traffic, or cause damage to other boats or maritime infrastructure. There is no specific authorization for law enforcement agencies to act by relocating and attempting to secure the vessel in a more appropriate location. Relocating the vessel would benefit the boat owner, the operators and owners of boats in the area, and the owners of maritime infrastructure.⁴

Section 823.11, F.S., defines “derelict vessel” to mean any vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At any port in this state without the consent of the agency having jurisdiction over the port; or
- Docked or grounded at or beached upon the property of another without the consent of the property owner.

The statute provides that anyone who stores, leaves, or abandons a derelict vessel is subject to a fine of up to \$50,000 per day.⁵

¹ Section 943.10, F.S., defines other law enforcement officers as, “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

² Section 327.70, F.S.

³ FWC, *Senate Bill 1594 Agency Analysis*, 1 (Mar. 7, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁴ *Id.*

⁵ See ss. 376.15 and 376.16, F.S.

Due to liability concerns, costs, and the difficulty of removing a derelict vessel, law enforcement agencies and local governments will sometimes leave a derelict vessel where it is found until such time as the notification period has elapsed, investigation into ownership of the vessel has been completed, criminal charges (if any) have been disposed of, and transport to a disposal facility has been arranged. The FWC reports that by the time the physical removal of a derelict vessel begins, the vessel may have already sunk, leading to much greater costs for removal.⁶

According to the FWC, one of the concerns that may delay resolving problems with derelict vessels is the possibility of incurring liability for damages. In addition, the majority of derelict vessel removals in Florida are performed by local governments. The cost of removal is infrequently recovered from the owner, leaving local governments responsible for the costs of removal and potentially any liability for damages during the removal process.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 327.44, F.S., providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate or remove a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.

It provides that those authorized to act under this section are held harmless for damages to a vessel as a result of relocating or removing the vessel unless the damage is the result of gross negligence or willful misconduct. It defines “gross negligence” and “willful misconduct.”

The bill provides for the recovery of costs, including those owed to a third party, incurred as a result of removing or relocating a vessel from the vessel owner and directs the Department of Legal Affairs to represent the FWC in actions to recover those costs.

Section 2 amends s. 376.15, F.S., providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate a derelict vessel to its existing authority to remove such vessels. It holds anyone acting under the section harmless for any damages to the derelict vessel resulting from relocating or removing the vessel, unless it is the result of gross negligence or willful misconduct. It defines “Commission” as the Fish and Wildlife Conservation Commission, “gross negligence” and “willful misconduct.”

Section 3 amends s. 823.11, F.S., providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate a derelict vessel when it obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. It does not affect the FWC’s existing authority to remove such vessels.

The bill clarifies that “Commission” means the Fish and Wildlife Conservation Commission. It holds the FWC, other law enforcement agencies, and officers acting under the section harmless for all damages to the derelict vessel resulting from relocation or removal of the vessel, unless the damages are the result of gross negligence or willful misconduct. It provides for the recovery

⁶ *Supra* note 3, at 1.

⁷ *Supra* note 3, at 2.

of costs, including those owed to a third party, as a result of relocating a derelict vessel. Lastly, the bill removes references to “abandoned vessels,” narrowing the scope of the statute to derelict vessels.

The bill provides that a contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer must be licensed in accordance with applicable United States Coast Guard regulations and carry an insurance policy to insure against any accident, loss, injury, property damage, or other casualty.

Section 4 and 5 make conforming cross references.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vessel owners will be liable for all costs associated with relocating or removing their derelict vessels, including costs owed to third parties.

Providing liability protection to those authorized to relocate or remove a derelict vessel will shift the costs of damages to the individual whose property is damaged.

The bill will benefit property owners and the boating community as a whole if the provisions of the bill lead to more timely removal of vessels, which may limit damage to marine infrastructure and other property.

C. Government Sector Impact:

Providing authority to relocate vessels and providing liability protection to those authorized to relocate vessels, except in the cases of gross negligence or willful

misconduct, will encourage more timely removal or relocation of vessels. It is generally more expensive to remove or relocate a vessel that has sunk. In addition, any costs owed to third parties as a result of removing or relocating a derelict vessel will not be borne by any of the entities authorized to do so if the owner of the vessel can be located.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.44, 376.15, and 823.11.

The bill makes technical and conforming changes to section 376.11 and 705.101, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on March 31, 2014:

The committee substitute defines “gross negligence” and “willful misconduct” as it applies to the liability of the FWC, other law enforcement agencies, and officers for damages caused during the relocation or removal of a vessel that unreasonably or unnecessarily constituted a navigation hazard or interference with another vessel. It provides that a contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer must be licensed in accordance with applicable United States Coast Guard regulations and carry an insurance policy to insure against any accident, loss, injury, property damage, or other casualty. It makes technical and conforming changes.

CS by Environmental Preservation and Conservation on March 13, 2014:

The committee substitute:

- Limits the liability protection in the bill to damages to a derelict vessel not caused by gross negligence or willful misconduct;
- Adds “officer” to the entities covered by the liability protection in s. 823.11, F.S.;
- Clarifies “commission” to mean the Fish and Wildlife Conservation Commission; and
- Adds a section to the bill, amending s. 376.15, F.S., providing for the relocation or removal of any abandoned or derelict vessel and associated liability protection for such actions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
